

Employer Guide

Terminating 457 / TSS sponsored employees

The employer sponsored 457 / TSS visa program offers a great deal of benefits to employers. Through the sponsored visa program, employers can access talent from anywhere in the world and benefit from the competitive advantage which comes through having a diverse workforce and the skills and experience of foreign workers that may not be readily available locally.

Conversely, employees can benefit from the strong pay and work conditions, quality work experience and high living standards that are available in Australia.

Here are some key issues for HR teams to keep in mind in relation to terminating employees sponsored on a 457 or TSS visa:

Q: Can I terminate an employee on a 457 / TSS visa?

A: Yes. A sponsor can terminate the employment of a sponsored visa holder provided that they do so in accordance with the terms of the employment contract and workplace laws.

However, when the terminating employee is a sponsored visa holder, there may be some additional considerations that the organisation must work through taking into account the specific circumstances of the employment relationship. Given the time, expense and significant financial and personal commitment on the part of the sponsored employee, unwinding the sponsorship can pose practical challenges. There may be financial commitments, property leases, school term, and other factors that need to be taken into account when terminating the employment.

Q: Can I make a sponsored visa holder redundant?

A: Yes. Sometimes the needs of the business change and certain roles are no longer required. This is also the case for sponsored positions. The same rules apply to the visa holder as would apply to any other worker in the case of redundancy.

If the business wishes to redeploy the sponsored employee in an alternate position, the business will be required to lodge a new nomination application to the Department of Immigration before the employee can perform an alternate role.

Q: What are the employer's obligations upon termination?

- 1. Notify the Department of Immigration.** The employer must notify the Department of Immigration that the employment has terminated within 28 business days of the effective last day of employment.
- 2. Pay return travel costs of the 457 / TSS visa holder and dependents.** The employer is responsible to pay the cost of return travel for the 457 / TSS visa holder and dependents. This employer is liable to pay "reasonable and necessary" costs associated with returning the visa holder to the country of passport upon request – i.e. travel from home to the airport, and a one-way economy ticket. If the sponsored visa holder finds another sponsor or obtains another visa, then the business would not be expected to pay these costs.

3. **Keep records.** Employers are required to keep records relating to:
 - any costs paid to the 457 / TSS visa holder (such as visa costs or return travel costs),
 - correspondence with the Department of Immigration
 - details of the sponsored employee's duties and location of employment,
 - training records.Records must be held until 2 years after ceasing to be a sponsor.

4. **Pay costs of detection and removal.** If the former employee overstays his or her visa the employer can be liable to cover the cost of removal of the employee (less any return travel costs already paid by the employer) up to a maximum \$10,000.

Q: Can an employer stand down an employee on a 457 / TSS visa?

Yes, subject to some conditions:

Visa condition 8107

The 457 / TSS visa contains a restriction "condition 8107" which requires that the sponsored employee must not to cease working for the employer for more than 60 days. A sponsored employee is taken to have ceased employment if the employee "no longer has a genuine intention to perform the nominated occupation" for the employer. Once the sponsored employee is absent from work for more than 60 days with no intention to resume work then the Department of Immigration will deem the work to have ceased and the 457 / TSS visa will be cancelled.

Notice periods

Once a termination notice has been given, an employer can either require the employee to work their notice period, or elect to pay the employee in lieu of working the notice period. The 60 day period starts from the effective last day of work.

Employer Sanctions Act

When in a termination situation, employers must be careful not to allow a 457 / TSS visa holder to work in breach of condition 8107 as this puts the employer in breach of its obligations under the *Migration Amendment (Reform of Employer Sanctions) 2013* not to permit an employee to work in breach of their visa conditions.